IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

CRL.A.No. 24 of 1999(C)

ST.3176/1997 OF JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM
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APPELLANT/COMPLAINANT IN THE COURT BELOW:

JANARDANAN,
S/O. KRISHNAN,
NAYADIKUNNATH HOUSE,
P.O. THEKKUMMURI,
(VIA) KARALMANNA,
OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SMT.PREETHY KARUNAKARAN,
SMT.M.R.MINI.

RESPONDENTS/ACCUSED AND THE STATE:
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1. **SETHUMADHAVAN,**
S/O. RAMAN,
KUNNATH PUTHENPURAYIL HOUSE,
KARIMPUZHA AMSOM & DESOM,
P.O. KARIMPUZHA,
OTTAPALAM TALUK,
PALAKKAD DISTRICT.

2. **THE STATE OF KERALA,**
REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. SANTHOSH KUMAR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.24 OF 1999

Dated 7th February, 2007

JUDGMENT

This appeal is filed by the complainant. According to the complainant, the respondent accused has availed a loan of Rs.50,000/= for which he issued a cheque which was dishonoured for insufficiency of funds. After complying with the statutory formalities, he approached the court under section 138 of the Negotiable Instruments Act. The case of the accused was that he has not obtained any loan from the complainant. According to him, complainant and his relative purchased 15 cents of properties from him in January, 1997. After a week of the purchase, complainant had approached him and had informed him that the properties so assigned by him were joint property belonging to his brothers also and the complainant wanted the brothers of the accused to be consenting parties to the said assignment. As a security, the complainant had obtained a blank signed cheque leaf from the accused and thereafter complainant had sent the notice. This contention was considered in paragraph 12 of the judgment as follows:

"12. Ext.P1 is the disputed cheque. Accused has stated during his 313 Cr.P.C questioning that he had given a signed blank cheque leaf to the complainant as a security for obtaining the signature of his brothers as a consenting party for the assignment of properties effected by him in favour of the complainant. But, PW1 has tendered evidence that accused had written and signed Ext.P1 cheque in his presence. Ext.P1 is seen written in two different inks. Name of the Payee, Date and Figures (in figures and words) in Ext.P1 are written with blank ink. Signature of the accused is in blue ink. It is evident that Ext.P1 was written and signed using two different pens. If the cheque was written and signed by the accused as deposed by the Complainant, ordinarily, there will be no occasion for the accused to use different pens for filing up and signing the cheque. Though it was brought out during cross examination of PW1 that Ext.P1 cheque was written using two different inks, there was no attempts to bring out an explanation for the same by re-examining the witness. Evidence of the Complainant that the accused had written the cheque in his presence indicates that the accused had written the cheque using only one pen. This could not be so as the writings are in two different inks. Further, Complainant had no case in his complaint that the cheque was written and signed in his presence. There are no averments to this effect in Ext.P5 notice copy either. The evidence tendered by the Complainant that the cheque was written in his presence using his (accused's) pen is falsified by Ext.P1 instrument itself. Evidence of the complainant that the cheque was written and signed by the accused in his presence cannot be relied upon. No witnesses were examined to prove due execution of Ext.P1 apart from complainant himself. Complainant has not adduced sufficient evidence to prove due execution of Ext.P1 cheque."

Further, the court also found that no evidence was adduced to show that a loan was given to the accused. If a loan of such huge amount of Rs.50,000/= was given, apart from the blank cheque, at least some promissory notes or other security would have been given. That was also not done and nobody was examined to prove that there was loan transaction between accused and the complainant. In the above circumstances, presumption under section 139 cannot be pressed in and it was also not proved that the cheque was issued for a legally enforceable debt. In this connection, I also refer to the decision of the Apex Court in **Narayana Menon** v. **State of Kerala** (2006 (3) KLT 404 SC). I am of the view that trial court has taken a possible view while acquitting the accused and no interference is required in the same. I also note that even though notice was issued in this appeal as early as on 20.1.1999, it was not served on the accused/respondent No.1 and no relief can be granted to the appellant without serving notice to the contesting respondent. In any event, there is no merit in the appeal.

The appeal is dismissed.

J.B.KOSHY
Judge

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